

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAVID LARON TASH,) CV F 02 6233 WMW HC
Petitioner,)
v.) ORDER DENYING PETITIONER'S REQUEST
DERRAL G. ADAMS, et al.,) FOR CERTIFICATE OF APPEALABILITY
Respondents.) (Doc. 54)

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c)(1), the parties have consented to the jurisdiction of the United States Magistrate Judge. Judgment for Respondent was entered on January 30, 2006.

Petitioner has filed a notice of appeal, along with a request for a certificate of appealability. The controlling statute, 28 U.S.C. § 2253, provides as follows:

- 25 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
26 district judge, the final order shall be subject to review, on appeal, by the court of
appeals for the circuit in which the proceeding is held.
- 27 (b) There shall be no right of appeal from a final order in a proceeding to test the
28 validity of a warrant to remove to another district or place for commitment or trial
a person charged with a criminal offense against the United States, or to test the

1 validity of such person's detention pending removal proceedings.

2 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal
3 may not be taken to the court of appeals from–
4 (A) the final order in a habeas corpus proceeding in which the detention
5 complained of arises out of process issued by a State court; or
6 (B) the final order in a proceeding under section 2255.
7 (2) A certificate of appealability may issue under paragraph (1) only if the applicant
8 has made a substantial showing of the denial of a constitutional right.
9 (3) The certificate of appealability under paragraph (1) shall indicate which specific
10 issue or issues satisfy the showing required by paragraph (2).

11 In the present case, the Court finds that Petitioner has not made the required substantial
12 showing of the denial of a constitutional right so as to justify the issuance of a certificate of
13 appealability. Accordingly, Petitioner's request for a Certificate of Appealability is DENIED.

14 IT IS SO ORDERED.

15 **Dated:** February 14, 2006
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16 /s/ William M. Wunderlich
17 UNITED STATES MAGISTRATE JUDGE
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